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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993.

EDSON G. GARDNER, LYNDA M. KOZLOWICZ,

AND OTHERS SIMILARLY SITUATED AS

ABORIGINAL UINTAH NATION,

Petitioners,

vs.

UNITED STATES OF AMERICA, et. al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Edson G. Gardner, Pro-Se and

Lynda M. Kozlowicz, Pro-Se

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116 pp

QUESTIONS PRESENTED

Does the "State of Utah" in "good Faith", exception to Indians like Edson G. Gardner and Lynda M. Kozlowicz, and others in the Uintah Valley of the State of Utah, exclusionary rule apply to the Uintah Valley Reservation, seized pursuant to the Jurisdiction when the only information in support of probable cause to Indians like Edsson G. Gardner, and Lynda M. Kozlowicz and others in the jurisdiction or has the State of Utah gotten the consent obtained, or did the breaking of this injunction, or is it being obtained during, or is it being abridged, or a Constitution violation of the Fifth or the Fourteenth Amendments to the United States Constitution, that this case in Ute Indian Tribe v. State of Utah, 773 F.2d 1087 (1985)(en banc), cert. denied, 479 U.S. 994 (1986).

That 25 U.S.C. 677-677aa....the Ute Partition and Termination Act, applies to

Uintah Mix Descendant (Gardner) and (Kozlowicz) Ute Tribal Member, the deprivation of sovereignty....Indian sovereignty does not deprive any one of treaties or Acts of Congress, it is inherent, that makes government subject to International Law.

Treaties can only be made between authorized representatives of sovereign Nations. The view that Indian Nations are sovereign, has been consistently upheld and protected by United States Courts. Consequently, treaties signed between Indian Nations and the United States have the dignity as well as the full force and effort of any other International Agreement.

TABLE OF CONTENTS

QUESTIONS PRESENTED

A. CONSTITUTIONAL PROVISIONS IV

B. CASES V

C. AUTHORITIES VI

Complaint For Declaratory Judgment

INJUNCTIVE RELIEF 2

I. Background 3

II. Nature Of The Action 5

III. JUrisdiction 7

IV. Class Action 8

V. Parties 10

VI. Facts Of Claim 14

COUNT I.

Declaratory Judgment.....43

COUNT II.

Injunctive Relief.....46

COUNT III.

Damages - Tucker Act.....50

PRAYER FOR RELIEF 52

DEMAND FOR JURY.....55

APPENDIX A. Filed July 12, 1993, handed down May 5,1994.

APPENDIX B Filed May 5,1993, handed down May 7,1993.

APPENDIX C. Report and Recommendation Filed on Aug. 17, 1993, handed down Apr. 19,1993.

A. CONSTITUTIONAL PROVISIONS

Uintah Valley, 1 c. Kappler 900 .....6.8.44

Reaffirming Uintah Valley 13 .....6.8.

Stat. 63 .....

28 U.S.C. 1331.....7

28 U.S.C. 1346(b) 8.52

United States Const. Art. I,

Sec. 8(3).....8

United States Const. Art. 3,

Sec. 2.....8

28 U.S.C. Sec. 1651(a).....8

25 U.S.C. 177.....8

Federal Rule of Civil Procedure

23(a) and 23(b).....8

Art. III, Sec. 2 Const. of the Ute

Indian Tribe.....17

Art. IV.Sec. 1 Const. of the Ute Indian Tribe.....17

Art. IV. Sec. 4 Const. of the Ute Indian Tribe.....18

Art. II. Sec.2(a) Const. of the Ute Indian Tribe.....18

25 U.S.C. 677v.....19,37,41

Freedom of Information Act 5 U.S.C. 552.....25

Act of August 13, 1954 (68 Stat. 718).....38

28 U.S.C. 2201.....43

28 U.S.C. 1331.....43

28 U.S.C. 1333.....43

25 U.S.C. 177.....43

25 Stat. 157.....32

B. CASES

Ute Indian Tribe v. State of Utah, 773 F.2d 1087 (1985)(en banc).....I.

Ute Indian Tribe v. State of Utah, Civil No. C-75-408 J, pending in Ninth Ciruit.....44.50

Klamath and Modoc Tribes et al., v. Maison, et al., Civil No. 8081, U.S.D.C. Oregon.....36

C. AUTHORITIES

President Nixon's landmark of July 8, 1970, message to Congress 116 Cong. Rec. 23256, 6 Pres. Doc. 894 27

Crow Boundary Settlement Act S. 1215.....29.30

Aboriginal Uintah Nation's Constitution.....32

Solicitor Memorandum, M 36305 September 21, 1955.....36

Solicitor Memorandum ,M 36304 September 6, 1955.....40

Indians born within the territorial limits of the United States are citizens of the United States, by Act of June 2, 1924 (42 Stat. L. 253).....48

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UNITED STATES OF AMERICA;

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES SUPREME COURT

COMES NOW, Edson G. Gardner,

and Lynda M. Kozlowicz, and Others Similarly

Situated as Aboriginal Uintah Nation,

Petitioners.

herein and hereinafter referred to collectively as "Plaintiffs", as Attorney Pro-Se, and for their complaint against the UNITED STATES OF AMERICA; SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR, Bruce Babbitt; BIA Superintendent of the UINTAH AND OURAY AGENCY ON THE UINTAH AND OURAY INDIAN RESERVATION, Perry Baker, BIA Officer Kenneth Blackbird, Officer Minnie Grant, Officer Felicia Pike; along with UTAH STATE TAX COMMISSION; STATE OF UTAH; State Attorney General, Jan Graham; Uintah County Sheriff, Lloyd Meacham; Uintah County Officer, Doreen Dirzuweit; Duchesne County Attorney, Herbert WM. Gillespie; Uintah County Attorney, Joann Stringham; Roosevelt City Attorney, Craig Bunnell; Duchesne City Attorney, Roland Uresk; are the defendants herein allege and aver as follows:

I. BACKGROUND

1. Since the birth of the United States as a nation and the promulgation of the

United States Constitution, the intent of the farmers of the U.S. Constitution ("farmers") has been to recognize Indian Tribes as sovereign and independent poltitical entities. The Aboriginal Uintah Nation, is and always has been, such a sovereign entity.

2. Notwithstanding the clear recognition of sovereignty by the farmers of the U.S. Constitution and early decisions of the United States Supreme Court, the United States Government has violated tribal sovereignty, self-determination and independence throughout the first two centuries of the United States Constitutional form of government.

3. With respect to the Aboriginal Uintah Nation and its relationship with the federal government, it began with the GUADALUPE HILADGO TREATY of 1849. In 1861, the federal government, under the Uintah Valley , took all but 4,000,000 acres of Uintah Land. Through a series

of federal acts, that acreage has been reduced to 2,000,000 acres.

4. Congress realized and acknowledged the deviation from the farmers' original intent regarding sovereignty and independence and passed the Indian self determination and Education Act of 1975, which Congress intended to promote economic independence so that Indian Tribes could exercise their tribal sovereignty through direct contracting and other means of financial independence from the federal government.

5. Congress inteded that Indian Tribes', including the Aboriginal Uintah Nation internal and tribal legislation be free of all outside influences.

II. NATURE OF THE ACTION

6. This is a civil action seeking a declaration; that the proposed settlement between the Aboriginal Uintah Nation and the Department of the Interior setting forth the terms and conditions relating

to the disposal, distribution, and transfer of Aboriginal Uintah Nation's lands within the border of the Uintah Valley Reservation, where an Indian Reservation constitute:

> INDIAN RESERVATION, constitute and that DEFENDANTS, Secretary of the Interior, BRUCE BABBITT; PERRY BAKER, KENNETH BLACKBIRD, MINNIE GRANT, FELICIA PIKE; STATE OF UTAH, Uintah County Sheriff, Uintah county Officer, Duchesne County, Uintah County, Roosevelt City, Duchesne City; must comply with the provisions of EXECUTIVE ORDER No. 38-1. Reprinted in 1 C. Kappler, 900 Law and Treaties Congress confirmed 13 Stat. 63 creating the Uintah Valley Reservation, of 1861 and obtain the express written consent of "at least, a majority of all adult male Indians, occupying or

interest in the same....", and a declaration that the ABORIGINAL UINTAH NATION is prohibited from pursuing in different judicial districts simultaneous and concurrent law suits which conatin indenticial claims, and involve identicial issues of law and fact.

EDSON G. GARDNER, LYNDA M. KOZLOWICZ, V. UNITED STATES, Civil No. 93-4102 (United States Court of Appeals for the TENTH CIRCUIT May 5, 1994), IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION reseved May 07,1993, order unreported, Judge Dee Benson Report and recommendation case No. 92--723 B, Ronald N. Boyce, Magisrtate Judge.

III. JURISDICTION

7. The jurisdiction of this court is invoked pursuant to : 28 US. Code Section 1331, in that a controversy exists between the parties respecting a federal

question, section 1346(b) for damages Plaintiffs sustained in an amount not exceeding $10,000 per person.

8. This civil action is based upon the United States Constitution, Article I. section 8(3), Article 3 Section 2; 28 U. Code Section 1651(a); the EXECUTIVE ORDER, 1 C. Kappler, 900, Congress confirmed 13 Stat. 63 of 1861, and 25 U.S. Code Section 177.

IV. CLASS ACTION

9. The named Plaintiffs seek to maintain this action on behalf of themselves and all others similarly situated, pursuant to rules 23 (a) and 23 (b), Federal Rules of Civil Procedure.

10. The members of the class which Plaintiffs represent includes ABORIGINAL UINTAH NATION's members of the Uintah Valley (1861), who are now and may in the future as members of the class be so numerous that joinder is impractical.

11. There are questions of law and fact, common to the class.

12. The claims of the representative parties are typical of claims of the class.

13. The representative parties will fairly and adequately prosecute the interests of the class.

14. The proecution of separate actions, by individual members of the class would create a risk of:

a) Insistent or varying adjuications, with respect to individual members of the class, which establish incompatible standards of conduct for the party or parties opposing the class, or

b) Adjuications with respect to individual members of the class, which would as a practical matter, be dispositive of individual members not parties to the adjudications or would substantially impair or impede the ability to protect their interests.

V. PARTIES

15. Plaintiffs Edson G. Gardner, and Lynda M. Kozlowicz, also Darrell A. Gardner, Colleen R. Gardner, and Roger R. Gardner as Amici Curiae----are members of ABORIGINAL UINTAH NATION, and UTE INDIAN TRIBE of Indians on the Uintah and Ouray Agency, in Utah, and herinafter "AUN", at all times alleged herein----Edson G. Gardner, Colleen R. Gardner,
were duly elected members of the INTERIM COUNCIL MEMBERS of the ABORIGINAL UINTAH NATION.

16. Defendant United States of America, hereinafter "USA", is a sovereign government, whose executive branch, through its elected and appointed officers, agents, employees, and representatives, administrate, govern, and manage the affairs of government and the AUN, pursuant to the United States Constitution, the Constitution of AUN, and Treaties, statutes, laws, rules, regulations, and agreements, thereof, and

thereunto pertaining.

17. Defendant Bureau of Indian Affairs, hereinafter, "BIA", exists and operates under the Executive Branch of the government of the USA as a federal agency within the Department of the Interior. Pursuant to Constitutions of the USA and AUN, and their treaties, statutes, laws, riles, and regualations, BIS manages, administrates and oversees in a fiduciary capacity the business affairs, finances and activities, including the administrative, judicial and legislative functions of the AUN.

18. Defendant Secretary of the Department of the Interior, Bruce Babbitt, hereinafter "Babbitt", is the appointed Secretary and member of the President's Cabinet who adminiatraters the business of the Executive Branch of the Government with an through the Department of the Interior. As Secretary of the Department of the Interior, Babbitt is responsible for administering federal programs

relating to Indian Tribes and is the trustee for Indian resources and property. Under his administration are the BIA, its employees Perry Baker and the BIA Officers and the AUN.

19. Defendant Perry Baker, hereinafter "Baker", is the BIA Superintendent of the Uintah and Ouray Agency on the Resveration who at all times was the BIA Superintendent, subject to the direction of BABBITT and others, administers and oversees in a fiduciary capacity the business affairs, finances and activities, including the administrative, judicial and legislative functions of AUN, from in or about July 1990 to the present date.

20. Defendant Kenneth Blackbird, Minnie Grant, and Felicia Pike, hereinafter "BIA", individually and as BIA Officers or the Uintah Valley Indian Reservation, U and O Agency, Utah, resides at U and O Agency and who uner the direction of BABBITT and Baker administers and manages

in a fiduciarycapacity of the Uintah Valley.

21. Defendant Jan Graham, hereinafter "State of Utah", individually as Attorney General, who is now as alleged herein, employee of the State of Utah, since in or about 1992 to now, also State Tax Commission of Utah.

Defendant Lloyd Meacham, hereinafter "Uintah County Sheriff", individually as Sheriff, who is now as alleged herein, employee of the State of Utah, since in or about 1992, to now;

Defendant Doreen Dirzuweit, hereinafter "Uintah County Officer", individually as Officer, who is now as alleged herein, employee of the State of Utah, since in or about, 1992 to now.

22. Defendant Herbert WM. Gillespie, hereinafter "Duchesne County", individually as County Attorney, who is now as alleged herein, employee of the State of Utah, since in or about 1992 to now;

Defendant Joann Stringham, hereinafter "Uintah County", individually as County Attorney, who is as alleged herein, employee of the State of Utah, since in or about 1992 to now;

Defendant Craig M. Bunnell, hereinafter "Roosevelt City", individually as City Attorney, who is now as alleged herein, employee of the State of Utah, since in or about 1992 to now;

Defendant Ronald Uresk, hereinafter "Duchesne County", individually as City Attorney, who is now as alleged herein, employee of the State of Utah, since in or about 1992 to now.

VI. FACTS OF THE CLAIM

Consitution of the ABORIGINAL UINTAH NATION of Indians

23. In or about December 19, 1936, the BIA hired and Directed Attorneys to draft a Constitution for the UTE Tribe. BIA

then directed the UTE Tribal Council to hold and ratify a referendum adopting the Tribal Constitution and By-Laws that were drafted by the BIA Attorneys. The UTE Tribe's council did as it was directed and adopted the BIA Constitution and By-Laws, which were acknowledged, approved and certified on January 12, 1937, by then UTE Tribal Chairman and Secretary, and, by Harold L. Ickes, Assistant Commissioner, BIA, Department of the Interior, on behalf of the Secretary of the Interior.

24. The UTE Tribe's Constitution provides in its preamble:

> We, the UTE Indians of the UINTAH, UNcompahgre, and WHITERIVER Bands, Hereafter to be knwon as the UTE Indian Tribe of the UINTAH and OURAY Reservation, in order to establish a more responsible Tribal organization, promote the general welfare, encourage and

secure to ourselves and our posterity the power to exercise certain rights of home rule, not inconsistent with the Federal, State and local laws, do ordain and establish this constition for the UTE Indian Tribe of the Uintah and Ouray Reservation.

25. The UTE Tribe's Constitution provides in Article, status and functions of the council:

1. The UTE Tribal Council is the voice of the UTE Tribe.

2. The UTE Tribal Council is the medium, the body, the tribal organization through which the UTE Tribe speaks to the government and the general public.

3. The council, representing the entire UTE Tribe, shall voice the opinions, wishes, sentiment, hopes, and decisions in any and all tribal matters for the UTE

people to the Congress and the Interior Department, by resolutions and through tribally elected delegates who shall, under instructions of the council, proceed to Washington or elsewhere to present in person such decisions and their own arguments and appeals in support thereof as the council shall direct by majority vote.

26. The UTE Tribe's Constitution provides, Article III, sec. 2 of what is the Constitution of the Ute Indian Tribe, provided that the governing body of the THREE Bands, and the Uintah Band Article IV, sec. 1 of the Constitution of the Ute Indian Tribe, recognized that the actions of the governing body of the Ute Indian Tribe were "subject to review by the Bands themselves at annual or special meeting."

Article IV, sec. 4 of the Constitution of the Ute Indian Tribe, reserved powers, provides:

> Any rights and powers heretofore vested in the Tribe or Bands of the Uintah and Ouray Reservation but not expressly referred to in this constitution shall not be abridged by Article, but may be exercised by the people of the Uintah and Ouray Reservation through the adoption of appropriate By-Laws and Constitional Amendments.

Article II, sec. 2(a) of the Constitution of the Ute Indian Tribe provides that:

> (a) No property rights shall be acquired or lost through membership in this organization excpet as provided herein.

<u>Violations of UTE Constitution and Uintah Valley Indians</u>

27. In or about March 1954, a tribal election was held, and the Tribal Election Committee officially certified Waubin Wanzite as Chairman.

Defendants Secretary of the Department of the Interior and Superintendent of U and O Agency, overrode the Constitutionally mandated certification of the Election results by the UTE Tribal Election Committee, and without legal right or justification certified DEFENDANT, State of Utah office, upon information and belief, DEFENDANTS, Counties and Cities prepared and submitted 677V, to the Tribal Council, which was not approved by Tribal members voting in favor of Utah State Jurisdiction proposed resolution as condition of their resolution of March 31, 1954, provides that DEFENDANT, Babbitt and Baker shall:

> By the Ute Indian Tribe of the Uintah and Ouray Reservation

in general Council assembled on this 31st day of March, 1954, (Part 2.) That the Tribe also declares it to be its policy that the Full-Blood as herein defined, shall have full political jurisdiction and responsibility over the persons and properties of Full-Blood members of the Ute Indian Tribe, and the Mix-Bloods, as herein defined, shall have full political jurisdiction and responsibility over the persons and properties of said Mix-Blood.

29. Defendant Baker, upon reviewing Resolution of complaints of Civil action stated in a letter:

There are administrative remedies available through the Federal Tort Claim Act. CC: George Tahbone, Chief Judge, Ute Tribal Court.

30. From 1954 to the present date, DEFENDANTS Babbitt, the BIA, Baker, Blackbird, Grant, Pike, have engaged in negotiations, exectued agreements and contracts, between one another and with third parties, which are illegal, unenforcable and void because DEFENDANTS Babbitt, the BIA, Blackbird, Grant, Pike, have violated AUN Constitution by denying the members the opportunity to vote upon proposed agreements and contracts, to approve or disapprove of them.

31. DEFENDANTS Baker, Blackbird, Grant, Pike, thereafter proceeded to extensively rely upon and use 25 U.S.C. 677V to advance and successfully achieve their aims, objectives, goals, programs, and policies without AUN approval, knowing that their act and/or omissions could not be successfully challenged in the Ute Tribal Courts,

and that AUN members were indigent and were therefore unable to bring an action in Federal District Court to challenge the administration's unconstitutional acts.

DEFENDANTS (BIA). Baker, Blackbird, Grant, Pike control over the Trjbal Courts

32. Under the Constitution and By-Laws of the Ute Tribal Council, adopted on December 19, 1936 and approved January 12, 1937 as of Resolution of March 31, 1954, there is no provision for the separation of powers among the administrative, legislative, and judicial branches of AUN government. Since 1992, to the present date, judges of Ute Tribal Court serve at the pleasure of and by appointment by defendants Babbitt, Baker, Blackbird, Grant and Pike.

33. In or about July, 1992, Edson G. Gardner, Lynda M. Kozlowicz,

hereinafter Gardner, and Kozlowicz, filed an injunctive action in the Ute Tribal Court, contesting DEFENDANTS Baker, Blackbird, Grant, and Pike certifying DEFENDANT Uintah County Sheriff's Dept., Uintah County Officer, Dirzuweit...This action has never been heard by the Judges nor resolved by final order of the Tribal Court.

34. In or about July, 1992, DEFENDANT Baker holding his self out as going to Ute Tribal Chairman, immediately intervene in then sitting down with the Tribal Judge of the Tribal Court, and said BIA are not subject to Ute Tribal Court with the approval and consent of DEFENDANTS Baker, Blackbird, Grant, and Pike.

35. In or about July, 1992, DEFENDANTS Uintah County, Duchesne County, also Roosevelt City, Duchesne City, and State of Utah, and with the

knowledge, consent and approval of DEFENDANTS, Superintendent Baker notified the Ute Tribal Chairman and Ute Tribal Judge, BIA would go to the United States District Court before the results was announced, the July 29, 1992, Executive Direction to the Ute Tribal Council and Ute Tribal Court.

36. DEFENDANT Baker administration Resolution about the March 31, 1954, which was passed and adopted by the Ute Tribal members on March 31, 1954, provides in pertinent part 2:

> That the Tribe also declares it to be its policy that the Full Bloods as herein defined, shall have full political jurisdiction and responsibility over the persons and properties of Full-Blood members of the Ute Indian Tribe and the Mix-Bloods, as herein defined,

shall have full political, jurisdiction and responsibility over the persons and properties of said Mix-Bloods.

37. Plaintiffs are therefore precluded from exhausting their remedies in the Ute Tribal Court.

Refusal To Make Freedom Of Information Act Disclosures

38. DEFENDANTS Baker, Blackbird, Grant, Pike failed and refused to disclose to ABORIGINAL UINTAH members of the ABORIGINAL UINTAH NATION and the AUN Interim Council members, the budgets, financial statements, contracts, agreements, and other documents which have been requested verbally, in writing and pursuant to the Freedom of Information Act (5 U.S.C. 552) including but not limited to the following:

a) The terms and conditions of

the Uintah Valley Reservation;

b) Aboriginal Uintah Nation contract and collateral agreement with jurisdiction relating to the construction and management of the Uintah Valley Reservation;

c) The 1990-94, AUN administration annual budget;

d) Finanical reports, spreadsheets and working papers reflecting the withdrawl and expenditure of $ millions from the AUN trust account;

e) The terms and conditions of settlement for the UTE water compact;

f) Ute Tribe and State of Utah jurisdiction of the Uintah Valley;

Breach of the Jurisdictional trust

39. During the AUN administration prior to DEFENDANTS Babbitt and Baker, tht of Interim Council member Edson G. Gardner, Colleen R. Gardner, ... requested that Defendant Baker approve the disbursement of jurisdiction amounting to $ millions dollars, pursuant to

line item budget from the regular revenue stream of the AUN Tribal General Fund, his administration for general operation expenses.

Defendant Baker continuously and adamantly refused to approve any disbursement of any BIA monies held in trust for the AUN, including interest from the jurisdiction Trust Func stating that no money was available because the AUN did not ahve acceptable procedures basd upon BIA standards. The BIA Area Office as well as the BIA Central Office did not have a certified AUN procedure at that time.

40. In truth and fact, BIA certification was revoked in 1970. President Nixon's landmark decision in July 8, 1970 message to Congress, 116 Cong. Rec. 23258, 6 Pres. Doc. 894, outlined the severed problems Paced by American Indians and support for the tribal self-determination. Defendant Babbitt, acknowledged and approved this resolution.

41. In or about August 1992, Defendants

Babbit and Baker, Secretly and with neither the acknowledge of, consent, or approval of the AUN or the membership of Aboriginal Uintah Nation, and release the jurisdiction of the Aboriginal Uintah Nation members to a general revenue account accessible to Defendants County and City for their disbursement and use. beginning in or about July, 1992, continuing to the present date, Defendants State of Utah, then disbursed up to $ millions per month from this fund. Defendant Baker thereby was enabled to continue to hire aditional employees and to maintain the jurisdiction of the Aboriginal Uintah Nation Council meetings.

42. Upon information and belief, Defendant Babbitt has permitted Defendant Baker to deplete over $ million of the $ million jurisdiction trust fund.

43. Defendants State of Utah, Counties and Cities depleteion of the jurisdiction trust fund moneys has denied approximately members

of their pro rata share which equal a per capita payment amounting to approximately $ dollars per tribal member.

iolation of the Jurisdiction Concurrent Federal Civil Litigation and Breach of Trust Obligation by the Secretary of the Interior and Bureau of Indian Affairs

44. On December 15, 1993, at a hearing before the Senate Select Committee on Indian Affairs on S. 1216, the Crow Boundary Settlement Act, Senator Daniel Inouye, Chairman of the Committee on Indian Affairs, stated:

> "....I want to remind one and all that we are here today because the United States Government of the United States entered into a treaty with the Crow Tribe in 1868.
>
> As the members of this Committee know, treaties represent the solemn commitments of the United States, and as the United States Supreme Court has consistently recognized, acknowledged, treaties are considered to be the

Supreme Laws of the land.

In addition, as the Supreme Court has consistently recognized, the provisions of treaties and the rights they protected cannot be abrogated without the express consent of the Congress.

Specifically, no administrative action----or, as in this case, no error in surveying----can work to abrogate the rights to land and minerals that the treaty of Fort Laramie guaranteed to the Crow Tribe...."

and whereas, Uintah Valley Reservation issues are similar to S. 1216.

45. Upon information and belief, Defendants Babbitt and Baker have agreed to give right, title and interest in the lands, including mineral and water rights tot he State of Utah. The Ute Tribe, Ute not enrolled, non-Indians and third parties and others.

46. Upon information and belief, Defendants

Babbitt and Baker have reached a final agreement, which they have submitted to Congress for approval.

EDSON G. GARDNER, LYNDA M. KOZLOWICZ v. UNITED STATES OF AMERICA,

Civil No. 93-4102 (United States Court of Appeals for the TENTH CIRCUIT May 5, 1994), IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICTDISTRICT OF UTAH CENTRAL DIVISION reseved May 07, 1993. order unreported, Judge Dee Benson, Reprt and Recommendation, case no. 92-C-723 B.

47. Defendants Babbitt and Baker have neither disclosed the terms and conditions of the Uintah Valley Settlement proposal to the Aboriginal Uintah Nation Executive Committee nor to its AUN Council, nor to the members of the Aboriginal Uintah Nation. The Ute Tribal administration has obtained neither the approval of the Tribal Council, nor the approval of the adult males of the Aboriginal Uintah Nation....of any of the terms and

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conditions relating to the Uintah Valley Settlement proposal. 25 Stat. 157

48. At the present time is vigorous objection by a majority of Aboriginal Uintah Nation members to what are believed to be the terms and conditions of the Defendants Babbitt and Baker's Uintah Valley proposal settlement. 25. Stat. 157

49. Upon information and belief, the terms and conditions of the final agreement and unfair, inequitable and not in the best interests of the Aboriginal Uintah Nation.

50. Defendants Babbitt, Baker, State of Utah, Counties, and cities acts and omissions violate both, the Uintah Valley 1861, and the Aboriginal Uintah Nation's Constitution. Aun Constitution is now in front of Daniel Inouye in the Senate Select Committee S.____, so it cannot and should not be voted upon by Congress unless and until the Uintah Valley of 1861 and the AUN Constitution is complied with.

51. Upon information and belief, the

final agreement reached between Defendants Baker and Babbitt, the Secretary of the Interior constitutes a cession, for which AUN Council approval alone, or the authorized Executive Action by Defendants Babbitt and Baker, is legally inadequate and fails to comply with the terms and conditions of the Uintah Valley of 1861 and the Constitution of AUN.

52. Despite recent polices which have encouraged self-determination and which have affirmed the permanent nature of tribal governments, there are many tribes which suffer because of past policies which failed to recognize their status, or sought to end it. Almost 100 tribes' relationship to the Federal Government was legislatively ended during the 1950's when Congress adopted a policy called "Termination". One hundred thirty other tribes have never been recognized by the Federal Government usually because of

bureaucratic oversight, and they too, suffer because their status is not defined. There is no reason why some 200 tribes should not benefit from the relationship the United States maintains with other tribes, and there is no reason why Federal Policy should not be implemented equitably to all tribes.

1) Tribes which were terminated must restored to their formal political status and Congress must establish a legal process for restoration.

2) Tribes which have been overlooked, forgotten, or ignored must be recognized as possessing their full rights as tribes.

The material issues under both substantial and itegeal to the convictions and sentences imposed by the State of Utah, which presently place Aboriginal Uintah Nation members in the custody of the State of Utah Courts, and are control to the

Instant Cause of Action.

The issues before the court are substantial questions of subject matters jurisdiction over AUN member, a Native American Indian (Uintah Mix-Blood Descendant). Offenses having occurred within the original boundaries of the Uintah Valley Indian Reservation of North-Eastern Utah (Indian Country), between the dates of March, 1992 and August, 1994.

Four questions are permanent for this court's consideration of Aboriginal Uintah Nation members contention of likelihood of success, and meet necessary measures for disposition in timely fashion, which are presented as follows:

1) Was AUN member constitutionally entitled to his jurisdictional challenge hearing (while the State entertained his prosecution and appeal) to factually determine by the preponderance of evidence proper subject matter of civil

and criminal jurisdiction as a matter of Law??

2) Between said tribe and the United States, to hunt and trap upon the Uintah Valley Indian Reservation without restriction or control, except such restrictions or control as they may impose upon themselves. In the case of Klamath and Modoc Tribes et. al., v. Maison et,al., civil No. 8081, U.S.D.C. Oregon. The decision in the case was entered in 1956 (139 F.Supp.634). Enactment of the Klamath Indian Termination Act, and did not, therefore, consider the applicbility of that to the hunting proceeding upon application by the plaintiffs and a proper showing in line with State and Federal governmental policy, and attempts by the Indian of necessity took form of suppression.

3) Solicitor Memorandum, number M-36305,

September 21, 1955.

The Secretary is without authority to approve a transfer of a minor from the full-blood roll to the Mix-blood roll under section 4 of the Act. The power of the Secretary to transfer a minor from the proposed full-blood roll to the Mix-Blood roll upon the application of the parent for himself and his minor children, pursuant to section 4 of the Act of August 27,1954, Public Law 671-83d Congress (68 Stat. 868).

Section 4 States that any member of of the tribe whose name appears on the proposed roll of full-blood members may apply to the Superintendent to become identified with and part of the mix-blood roll provided that before such transfer is made the Secretary shall first certify that in his opinion such change in status is not detrimental to the best

interests of the applicant. The provisions of the Act are silent with respect to the transfer of a minor to the mix-blood roll. In this regard it differs from the Klamath Withdrawal Act of August 13, 1954 (68 Stat. 718) which specifically gives the head of the family the right to file for himself and his minor children an election to withdraw from the tribe.

Section 22 provides for the protection by the Secretary of the rights of minors and other members of the tribe in need of assistance and further, that the appointment of guardians pursuant to State Law will not be required until Federal supervision has terminated. The indication of this section and other provisions of the Act are that this protection was intended for the

benefit of members of the mix-blood roll. The restrictions on their trust and redistricted property are to terminate in accordance with section 16 and the assets of the mix-blood group are to be distributed to the individual members under section 13. It was apparent that the Act would result in some members of a family being placed on the full-blood roll and others on the mix-blood roll. If it were contemplated that the integrity of the family was to be maintained with respect to their membership some provision it seems would have at least been made allowing members of a family to transfer from the mix-blood roll to the full-blood roll. An examination of the legislative history of the Act is of no aid on the question posed. In the absence

of any express language in the Act or Congressional intent shown in its legislative history it must be concluded that the Secretary does not have such power, particularly when a transfer of a minor from the full-blood to the mix-blood roll would result in the taxation and removal of restrictions on his trust and restricted property and in loss of the right by section 23 to share in Federal services available to Indians because of their status as Indians.

4) Solicitor Memorandum, number M-36304, September 6, 1955.

The determination of the full-blood membership of the Ute Tribe of the Uintah and Ouray Reservation in Utah for the purpose of participating in the development program provided for in section 24 of the

Act of August 27, 1954 (68 Stat. 868; 25 U.S.C. 677), is controlled by the provisions of the Act and not by the Constitution and ByLaws of the Ute Indian Tribe. Section 24 of the Act reads:

"Within three months after the date of enactment of this Act, the business committee of the tribe representing the full-blood group thereof shall present to the Secretary a development program calculated to assist in making the tribe and the members thereof self-supporting, without any special government assistance, view of eventually terminating all Federal Supervision of the tribe and its members. The tribal business committee, representing the full-blood group shall,

through the Secretary of the Interior, make report to the Congress of its activities, and of the expenditure authorized under this Act". The development program provided for in the foregoing provision plainly is to be formulated for the benefit of the full-blood group, the membership of which is controlled by the statutory provisions referred to above and not by anything contained in the constitution and bylaws of the Ute Tribe. Under section 3 of the Act, the constitution and bylaws and any tribal ordinances in force on the date of the Act may be utilized only for the purpose of determining the "Ute Indian blood" of the mix-blood or the

full-blood member as those terms are defined in the Act.

COUNT I

DECLARATORY JUDGMENT

53. Plaintiffs reallege and incorporates by reference herein paragraphs 1-52 above.

54. An actual controversy exists between Plaintiffs and Defendants above-named involving a class for which plaintiffs are entitled to a judicial declaration of the rights and other relations of the parties hereto, pursuant to the Treaty of 1861, 28 United States Code Sections 2201, 1331, and 1333, and 25 United States Code 177. Plaintiffs are entitled to have this court decree and adjudge.:

a) The resolution of the Uintah Uintah Valley dispute Constitutes a cession; and that the ABORIGINAL UINTAH NATION must therefore comply with section of the Treaty

of 1861 by seeking the express consent an approval of the terms and conditions of the proposed Uintah Valley (1861) settlement agreement by a majority of adult males of the Uintah Valley voting by secret ballot.

b) The Defendants may not maintain simultaneous and identical lawsuits to their claim based upon section of Uintah Valley of 1861 1 c. Kappler 900, and that the civil No. C-75-408 J pending in the Ninth Circuit Court, is pending the resolution of this case that is at the present time, the threat of irreparable harm is emminent. As a matter of constitutional law, the circuit and District Courts of Uintah and Duchesne Counties, Utah, were obligated to hold an

evidentary proceedings on Gardner's jurisdictional challenge of State Taxation.

Because of the State's total indifference to this constantial right, AUN member Gardner, has been illegally charged and fined for two years of an erroneous State encroachment....forced into State exhaustion remedies and federal review where Gardner has consistently proven, by the preponderance of the evidence, that is federal jurisdiction. (a jurisdictional restraint that is unconstitutionally prejudicial until property established).

AUN member Gardner, is being deprived of life enjoyments and liberties; proper education and employment, and is suffering serious family hardships and family deprivation.

Where Plaintiffs has established by the preponderance of the evidence and law

that the State of Utah lacks subject matter jurisdiction over him, should be deemed unconsionable, and is a substantial irreparable unjury that no person should without cause, be subject to, and has never contended otherwise with the exception of intent, malice and State jurisdiction over them.

Edson G. Gardner, Lynda M. Kozlowicz v. United States of America, civil no. APEN. A (United States Court of Appeals for the Tenth Circuit May 05, 1994, IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION reseved May 07, 1993. Order Unreported, Judge Dee Benson, Report and Recommendation Case No. APEN. C, Ronald N. Boyce, Magistrate Judge.

COUNT II

INJUNCTIVE RELIEF

55. Plaintiffs reallege and incorporate by reference herein paragraphs 1-54 above.

56. The actions of Defendants USA,

Blackbird, Grant and Pike present immediate and irreparable harm and injury to Aboriginal Uintah Nation for which there is no adequate remedy at law. As established by the Aboriginal Uintah Nation, Interim Council member, and the State of Utah lacks jurisdiction to restrain them. Gardner, premised on this fact alone, the State could not reasonably be prejudiced or harmed in any fashion. AUN member Gardner, has always accepted that his actions resulted in substantial injuries, and in the same entered a plea of not guilty, while vigorously challenging State jurisdiction assumed over him, but was sentenced anyway, Kozlowicz challenge of State Taxation was ignored.

It is always in the public interest to act and rectify any situation involving wrongful State exercise of subject matter jurisdiction. The risk of harm is non-existent when State proceeds in

violation of constitutional law and contrary to federal statutes and Indian Law where a prohibition clearly exists in the favor of Gardner and Aboriginal Uintah Nation, Interim Council member and Ute Tribal member, Kozlowicz.

As for jurisdiction when knowing wrongful encroachment has occurred at the cost of any person life, liberties and freedom protected in constitutional law. Such as Gardner and his family and Kozlowicz.

Irrelevant as to the State's contentions and or obligations, a ward of the United States Government (treaties) and is obligated to its control and custody upon cause by their status as an American Indian, whereas, all Indians born within the territorial limits of the United States, by the Act of June 2, 1924 (43 Stat. L. 253), and that citizenship, as

well as care custody and control is susceptible to federal supervisory duty. As AUN member Gardner, cannot change his American Indian status, blood quantum and or aboriginal ancestry. For additional support Motion/Demand by Edson G. Gardner to vacate all State convictions and sentences against AUN member Gardner, and for the jurisdictional challenge.

Further, Uintah Tribal enrollment and reinstatement of both AUN member Gardner, has neither been denied nor approved, but has simply been tabled in Fort Duchesne through the Ute Tribal Vital statistic pending ongoing federal litigation, by counsel for the Ute Indian Tribe, and has remained so since 1986, when the Tenth Circuit ordered full reinstatement based on Gardner's Mother's Uintah Ute Blood quantum of face court sanction (which has been increasingly imposed since 1986, and the

10th Circuit Court's ruling in, Ute Indian Tribe v. State of Utah, et. al., 773 F.2d 1087 (1985)(en banc), cert. denied, 479 U.S. 994 (1986).

COUNT III

DAMAGES - TUCKER ACT

58. Plaintiffs reallege and incorporate by reference herein paragraphs 1-57 above.

59. At all times as alleged herein, Defendants BIA, and Babbitt were required by law to act as fiduicaries for the AUN. Their fiducary duties included acting as trustees of the Uintah Valley, and trust fund for the benefit of AUN members.

60. At all times as alleged herein, Defendants BIA, Baker, Blackbird, Grant and Pike as fiduicaries were obligated to administer and manage the Uintah Valley jurisdiction in a reasonable and prudent manner according to generally accepted,

business practices.

61. It was Defendants BIA Babbitt and Baker fiduicary duty to preserve and invest this non-renewable jurisdiction so as to ensure that each and every Aboriginal Uintah Nation member of the Uintah Valley (1861) would be assured of an annual per capita payment for the accured interest therefrom, or that jurisdiction trust fund monies were invested in a long term investment so as to ensure the future financial stability and security of the Aboriginal Uintah Nation members and the Uintah Valley as a whole.

62. Instead, Defendants BIA, Babbitt and Baker terminated the trust status of the Aboriginal Uintah Nation and dissipated the principle of this non-renewable resource by funding the general operating expenses of Defendants Utah and counties also the cities' administration, which permitted them the jurisdiction to their Utah State

laws meetings in support of the Defendants (BIA) Blackbird, Grant, and Pike the administration, from 1992 to the present date.

63. Defendants (Secretary of Interior) Babbitt and (Superintendent of the Uintah and Ouray Agency) Baker, failed to exercise reasonable and prudent judgment as required by law of fiduicaries, and have acted in an arbitary, capricious and expressive manner, and have exceeds and abused their fiduciary authority.

64. Defendants BIA, Blackbird, Grant and Pike acts and omissions have injured Plaintiffs individually and as a class in an amount exceeding $3,000 per person and less than $10,000 per person. Plaintiffs are entitled to damages pursuant to 28 U.S. Code section 1346(b), in an amount to be proved at trial.

PRAYER FOR RELIEF

PLAINTIFFS pray for the following relief:

1. A Declarative Judgment providing;

a) That resolution of the Uintah Valley dispute consitutes a cession; and that Aboriginal Uintah Nation must therefore comply with section 25 Stat. 157 of the Treaty of 1861, by seeking the express consent and approval of the terms and conditions of the proposed Uintah Valley settlement agreement by a majority of adult males of the Aboriginal Uintah Nation (Mix-blood Ute), voting by secret ballot.

b) that the Aboriginal Uintah Nation have simultaneous lawsuits in two separate Districts, relating to identical law and facts and that the civil action No. C-75-408 J pending in the Ninth Circuit.

2. Injunctive Relief as prayer for by Motion;

3. General damages pursuant to 28 U.S. Code section 1346(b) in an amount to proved at trial;

4. Special damages in an amount to be proved at trial;

5. Reasonable attorney's fees and costs;

6. And such other and further as may be just and equitable in premises.

Dated, Washington District of Columbia, Month Sept day 9 1994.

Attorney Pro-Se For Petitioners

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DEMAND FOR JURY TRIAL

COMES NOW EDSON G. GARDNER AND LYNDA M. KOZLOWICZ, PLAINTIFFS, AND Darrell A. Gardner, Colleen R. Gardner, and Roger R. Gardner as Amici Curiae and plaintiffs herein, who demand trial by jury.

EDSON G. GARDNER and LYNDA M. KOZLOWICZ, plaintiffs, Darrell A. Gardner, Colleen R. Gardner, and Roger R. Gardner as Amici Curiae, as plaintiffs vs. UNITED STATES OF AMERICA, Secretary of the Interior, Bruce Babbitt; BIA Superintendent of the Uintah Valley agency on the Uintah Valley Indian Reservation, Perry Baker----Bureau of Indian Affairs, Officer Kenneth Blackbird; Officer Minnie Grant; Officer Felicia Pike, all BIA; along with UTAH STATE TAX

COMMISSION, STATE OF UTAH, Jan Graham, State Attorney General; UINTAH COUNTY SHERIFF, Lloyd Meacham; UINTAH COUNTY OFFICER, Doreen Dirzuweit; DUCHESNE COUNTY ATTORNEY, Herbert Wm. Gillespie; UINTAH COUNTY ATTORNEY, Joann B. Stringham; ROOSEVELT CITY ATTORNEY, Craig M. Bunnell; DUCHESNE CITY ATTORNEY, Roland Uresk, are the Defendants herein allege and aver as follows.

APPENDIX-A

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

EDSON G. GARDNER, LYNDA M. KOZLOWICZ, Plaintiffs-Appellants,	)	ORDER AND JUDGMENT
v.	)	
UNITED STATES OF AMERICA, et.al., Defendants-Appellees.	)	No. 93-4102 (D.C. No.92-C-723-B) (D. Utah)

ORDER AND JUDGMENT*

Before BALDOCK and MCKAY, circuit Judges, and BROWN,** District Judge. **Honorable Wesley E Brown, Senior District Judge, United States District Court for the District of Kansas, sitting by designation.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally

disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the Court's General Order filed November 29, 1993. 151 F.R.D. 470.

After examining the briefs and Appellate record, this panel has determined unanimously that oral agrument would not materially assist the determination of this appeal. see FED. R.App.P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Following Plaintiff Edson G. Gardner's arrest on the Uintah and Ouray Indian Reservation (reservation), he and Plaintiff Lynda M. Kozlowicz commeced an action against various city, county, State, and Federal officials and entities seeking declaratory and Injunctive relief and damages. They appeal from the District Court's order dismissing their complaint,

agruing that the State of Utah lacked jurisdiction over Gardner for crimes committed on the reservation because he is an Indian. We affirm.

The complaint[1] alleges that Plaintiff Kozlowicz is a member of the Ute Indian Tribe (tribe) residing within the exterior boundaries of the reservation. Plaintiff Gardner is a member of the Uintah mixed blood descendants of the tribe residing within the exterior boundaries of the reservation. On January 13, 1992, while Gardner was driving from Roosevelt, Utah, to Fort Duchesne, Utah BIA officer Kenneth Blackbird stopped him for speeding. Upon the discovery that his registration was expired and that he did not have a valid driver's license, Gardner became vey loud and abusive.

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1 The District Court assumed that Plaintiffs' document entitled "To Amend Petition, Affidavit,and Complaint," R.Vol. 1, Doc. 5, was their complaint. They have not challenges this assumption. We therefore rely on this document as their complaint.

Blackbird then took him into custody. Defendants Minnie Grant and Felicia Pike, also BIA officers, were present during the arrest.

The Officers took Gardner to the Tribal Jail, where he was held for about thirty minutes. After discovering that Gardner was not a tribal member, they requested that the county take him into custody and file charges against him. Uintah County took Gardner into custody, jailed him and charged him with four State misdemeanors. Gardner was convicted of the four State charges on August 5, 1992, without notice or an evidentiary hearing to determine his Indian status.

The complaint challenges Gardner's arrest as having been effected without jurisdiction, and requests a declaratory judgment, relief in the nature of amndamus compelling defendants to "restore" the benefits of Indian jurisdiction to

plaintiffs and damages.

Several defendants moved to dismiss under Fed.R. Civ.P. 12(b). The matter was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). He issued a report and recommendation concluding that 1) The Eleventh Amendment bars the actions against the State of Utah and the Utah State Tax Commission, and bars the action for damages against defendants Van Dam, in his official capacity; 2) The complaint fails to allege that Van Dam, in his individual capacity, had any connection with the facts of which Plaintiffs complain; 3) The complaint fails to allege that defendant Duchesne County Attorney, Herbert Gillespie was connected to the facts of which Plaintiffs complain; 4) The complaint fails to alege facts to support a claim for relief on behalf of Kozlowicz against the county defendants; 5) Gardner, as a terminated mix blood Ute, was subject to State criminal

jurisdiction and thus has no agruable basis for relief against the remaining county defendants; 6) The county defendants cannot restore Gardner's Indian Status; 7) The complaint fails to allege that Roosevelt, Utah Had a role in the facts of which Plaintiffs complain; 8) Sovereign immunity bars the claims against the United States and Manuel Lujan Jr.[2] and Perry Baker in their official capacities; 9) There are no allegations indicting that defendants Lujan or Baker were sued in their individual capacities or that they were connected to the alleged violations; and 10) Defendants BIA officers Blackbird, Pike, and Grant had authority to arrest

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2 Consel for the federal defendants have informed the court that Bruce Babbitt, current Secretary of the Interior, should be substituted for Manuel Lujan pursuant to Fed.R.App.P. 43(c)(1).

Gardner and turn him over to the proper authorities. The magistrate judge recommended that the court grant the motions to dismiss of the State, County, and city defendants, and that the complaint agaginst the remaining defendants be dismissed as frivolous under 28 U.S.C. § 1915(d). The District court adopted the recommendation.

A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if, assuming all of the factual allegations are true and constuing them in the light most favorable to the defendant, "it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Hall v. Bellmon, 935 F.2d 1106,1109 (10th Cir. 1991) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). We review de novo the question of the sufficiency of a complaint

Dunn v. White, 880 F.2d 1188,1190 (10th Cir. 1989), cert. denied, 493 U.S. 1059 (1990).

An in forma pauperis complaint[3] may be dismissed under § 1915(d) if it is based on an "indisputably meritless legal theory." Neitzke v. Williams, 490 U.S. 319, 327 (1989). We review a § 1915(d) dismissal for abuse of discretion. Denton v. Hernadez, 112 S.Ct. 1728,1734 (1992).

The complaint failed to allege any facts in support of Kozlowicz's claims for relief. Our obligation to construe pro se pleadings liberally, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), does not required that we relieve a pro se plaintiff of "the burden of alleging sufficient facts on which a recognized legal claim could be based." Hall, 935 F.2d at 1110. Even giving Kozlowicz's

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3 Only Gardner was permitted to proceed in forma pauperis in the district court.

submissions before the district court a liberal construction, she has failed to adequately allege that she owned the car in question at the time it was confiscated. We therefore uphold dismissal of her claims.[4]

We agree in large part with the district court's reasons for dismissing Gardner's claims against the State defendants, Herbert Gillespie, Roosevelt, the United States, Bruce Babbitt, and Perry Baker, but add the following comments. Defendant Van Dam, sued in his official capacity as Attorney General, is not entitled to Eleventh Amendment immunity from claims for prospective injunctive relief. Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985).

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4 We do not address Kozlowicz's agruments concerning the conflict between State v. Perank, 858 P.2d 927 (Utah 1992), and Ute Indian Tribe v. Utah, 773 F.2d 1087 (10th Cir. 1985)(en banc), cert, denied, 479 U.S. 994 (1986), over the boundaries of the reservation as this issue is not

relevant to our disposition of her claims. We note, however, that the issue was recently resolved in Hagen v. Utah, 114 S.Ct. 958, 964-65 (1994).

Likewise, Babbitt and Baker, in their official capacities, are not immune from claims for nonmonetary relief. see Carpet, Linnoleum & Resilient Tile Layers, Local Union No. 419 v. Brown, 656 F.2d 564, 567 (10th Cir. 1981).

Gardner sought a judgment declaring that he is entitled to an opportunity to contest any decision depriving him of "Indian jurisdiction." This request apparently refers to the State Court's failure to afford Gardner an evidentiary hearing to determine his Indian status before finding him guilty of the State charges. It is unclear whether this relief is requested as to Van Dam, Babbitt, or all three.

To maintian a declaratory action to prevent recurrence of a past ....

constitutional injury, a party must demonstrate a good chance of the same injury occurring in the future. Facio v. Jones, 929 F.2d 541, 544 (10th Cir.1991). Since We determine Gardner's Indian Status in this appeal, future deprivations of a hearing to determine his status will cause him no constitutional injury. His action for declaratory relief therefore is without merit.

Gardner also sought an order in the nature of mandamus to restore the benefits of Indian jurisdiction to him. We agree with the district court that Gardner's Indian Status is a matter for Congress, not the defendants, to decide.

The claims against the remaining county defendants are premised on the notion that the State of Utah lacks jurisdiction over Indians for crimes committed on the reservation. The State of Utah does not have jurisdiction over crimes committed by Indians in Indian

Country. Hagen v. Utah, 114 S. Ct. 958, 964 (1994). However, States do have jurisdiction in Indian Country over crimes committed by non-Indians against non-Indians, as well as over victimless crimes committed by non-Indians. Solem v. Bartlett, 465 U.S. 463,465 n.2 (1984); Ross v. Neff, 905 F.2d 1349,1353 (10th Cir. 1990. We accept as true the allegations that Gardner's arrest occurred within the reservation,[5] and that he is a descendant of a terminated mixed-blood Ute. The pertinent inquiry is whether this status subject him to Utah's criminal jurisdiction.

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5 The Utah Supreme Court has held that Roosevelt, Utah, is not part of the reserve. State v. Coando, 858 P.2d 926,927 (Utah 1992). Fort Duchesne, However, is "situated on Indian Trust lands." Hagen, 114 S.Ct. at 970. Land held in trust for Indian use is considered Indian Country. Ross, 905 F.2d at 1352. It is unclear from the complaint exactly where the arrest occurred. However, we must accept the allegations of the complaint as true for purposes of Rule 12(b)(6) analysis and, in ant event, none of the defendants dispute that the arrest occurred on the reservation.

Where a Termination Act such as 25 U.S.C. §§677-677aa (the Act) ended the federal trust relationship with an Indian and exposed him to State law, he is subject to State criminal jurisdiction, unless his victim was an Indian. see St. Cloud v. United States, 702 F.Supp. 1456,1466 (D.S.D. 1988). see also United States v. Antelope, 430 U.S. 641,647 n.7 (1977)(noting that members of tribes whose official status has been terminated by Congress no longer subject to federal criminal jurisdiction); United states v. Heath, 509 F.2d 16,19 (9th Cir. 1974)(same). The Utah Court of Appeals has held that the State of Utah has jurisdiction over a terminated mix-blood Ute for crimes committed on the reservation. State v. Gardner, 827 P.2d 980,981-82 (Utah Ct. App.), cert. denied, 836 P.2d 1383 (Utah 1992).

Gardner contends that while the Act terminated federal supervision over

certain mixed-blood Utes, it did not expressly terminate supervision over the descendants of those individuals. The Act divided the tribe into two groups, the mix-bloods and the full-bloods. It called for the tribe to prepare and submit to the Secretary of the Interior a roll of mixed-blood and full-blood members of the tribe living on August 27, 1954, § 677g. The Secretary was directed to publish the rolls in the federal register. Id. Within sixty days of the publication of the final membership roll, the two groups were to commence a division of tribal assets susceptible to equitable and practicable distribution. § 677i. After the mixed-blood members received their share of these assets and any other property to which they were entitled, "[f]ederal supervision of such member and his property shall thereby be terminated," § 677o(a).

Upon removal of federal restrictions

on each individual mixed-blood member's property, the Act directed the Secretary to publish in the register a proclamation declaring that the federal trust relation ship to such individual was terminated. This proclamation was published on August 27, 1961. Section 677v. further provided that:

> [t]hereafter, such individual shall not be entitled to any of the services performed for Indian.because of his status as an Indian. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applic-cable to such member over which supervision has been terminated, and the laws of the several States shall apply to such member in the same manner as they apply to other citizens within their jurisdiction.

Section 677v, does not expressly provide that federal supervision over descendants of terminated mixed-blood Utes is terminated. Our examination of the intent of the Act, as well as some of its other provisions, however, convinces us that this was the Congressional intent.

The Act was part of a policy initiated in the 1950s by the federal government "to terminate its supervisory responsibilities for Indian tribes." South Carolina v. Catawba Indian Tribe, Inc., 476 U.S. 498, 503 (1986). Passage of House Concurrent Resolution 108 marked the beginning of this policy. Id. This resolution stated:

> "It is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prorogatives pertaining to American citizenship."

Id. at 503 n.10 (quoting H.R. Con Res. 108, 83rd Cong., 1st Sess. (1953), 67 Stat. B132). We can discern no reason why Congress would have intended that this policy apply only to Indians who were living as of August 27, 1954, but not to their descendants.

Further, the Act provided that effective upon publication of the final rolls, "the tribe shall thereafter consist exclusively of full-blood members. Mixed-blood members shall have no interest therein except as other wise provided in this subchapter. New membership in the tribe shall thereafter be controlled and determined by the constitution and bylaws of the tribe and ordinances enacted thereunder." 677d. This section was interpreted to mean that mixed-blood descendants can no longer become members of the tribe under its constitution. Chapoose v. Clark, 607 F.Supp. 1027,1036-37 (D.Utah 1985). Nor are mixed-blood descendants a federally recognized tribe of their own. see 58 Fed. Reg. 54,364 (1993).

Finally, §677q provides that once federal supervision is terminated, State law regarding probate, heirship, and administration of estates shall apply

to the individual trust property of mixed blood members. It is unlikely that Congress intended for the property of the descendants of terminated mixed-bloods to be controlled by State law if these persons were subject to federal super vision.

Menominee Tribe of Indians V. United States, 391 U.S. 404 (1968), relied on by Plaintiffs, does not lend support to their cause. Menominee Tribe held that an Act which terminated federal superivision of the Menominee Tribe did not nullify the tribe's treaty rights to hunt and fish on the reservation free from State regulation where the intent to abrogate those rights was not explicitly stated. Id. at 412-13. As the present case does not involve any t treaty-based hunting and fishing rights of Gardner, Menominee Tribe is of limited assistance.

To the extent that Plaintiffs rely

on Menominee Tribe for the proposition that Gardner's Indian Status cannot be abrogated absent an explicit statement, we reject that claim. While doubtful expressions of legislative intent should be resolved in favor of Indians, this canon of construction should not be applied to defeat clearly expressed Congressional intent. Catawba Indian Tribe, 476 U.S. at 506. We conclude that Congress's clearly expressed intent was to terminate federal supervision of all mixed-blood Utes.

Plaintiffs argue that the tribe's lack of consent to the State's assumption of jurisdiction pursuant to Utah Code Ann. §§ 9-9-201 to 9-9-204 precludes the States from exercising jurisdiction over Gardner for crimes committed on the reservation. We disagree. Section 9-9-201 authorizes the State of Utah to assume criminal jurisdiction over Indians and Indian Country in

accordance with the consent given by Public Law 90-284, 82 Stat. 78-80, to the extent authorized. Section 401(a) of Public Law 90-284, codified at 25 U.S.C. § 1321(a), gives the consent of the United States to States not having jurisdiction over criminal offenses committed by or against Indians in Indian Country situated within such States to assume, with the consent of the affected Indian tribe, jurisdiction of such offenses committed within Indian Country to the same extent the State has jurisdiction over such offenses committed elsewhere within the State. This legislation, affecting only offenses committed by or against Indians in Indian Country, has no application to Gardner.

Gardner's claim against the BIA officers appears premised on his contention that these officers lacked authority to arrest him because they

were not "cross-deputized." Tribal officers have authority to detain an offender on a reservation and transport him to the proper authorities. Duro v. Reina, 495 U.S. 676,697 (1990). The Complaint alleged that after the BIA officers became aware of Gardner's status, they transported him to this county authorities. Thus, this claim lacks arguable merit.

Plaintiffs' motions for a preliminary injunction and Plaintiff Gardner's motion for an injunction are DENIED.[6] Plaintiffs' motion for contempt is DENIED. The motion for leave to file an amicus brief is DENIED as untimely.[7]

The judgment of the United States District Court for the District of Utah is AFFIRMED. The mandate shall issue fothwith.

Entered for the Court

Monroe G. Mckay
Circuit Judge

6 Plaintiffs failed to comply with Fed. R. App. P. 8(a).

7 See Fed. R. App. P. 29 (providing that, absent consent of all parties or showing of cause, brief of amicus curiae must be filed within time allowed for filing brief of party whose position amicus brief will support).

APPENDIX B

IN THE DISTRICT COURT

OF UTAH, CENTRAL DIVISION

Case No. 92-C-723 B

LYNDA M. KOZLOWICZ,	)	
EDSON G. GARDNER,	)	
Plaintiffs,	)	Case No. 92-C-
vs.	)	723 B
UNITED STATES OF AMERICA,	)	O R D E R
et.al.,	)	
Defendants.	)	

The plaintiffs filed the instant action against the defendants complaining about jurisdictional deficiencies in connection with the arrest of plaintiff Gardner. The matter was referred to the magistrate judge under 28 U.S.C. §636(b)(1)(B). The magistrate judge made a report and recommendation that the motion to dismiss of defendants State of Utah, State Attorney General Paul VanDam, Uintah County Attorney Harry Souvall, the Uintah County Sheriff's

Department, Uintah County Sheriff Lloyd Meacham, Uintah County officer Doreen Dirzuweit, Herbert W. Gillespie, and Roosevelt City should be granted; and plaintiff Gardner's complaint against the remaining defendants should be dismissed as frivolous under 28 U.S.C. § 1915(d). No objection has been taken to the recommendation. The court has reviewed the file and believes the recommendation to be correct. Therefore, **IT IS HEREBY ORDERED** that the motion to dismiss of defendants State of Utah, State Attorney General Paul VanDam, Uintah County Attorney Harry Souvall, the Uintah County Sheriff's Department, Uintah County sheriff Lloyd Meacham, Uintah County officer Doreen Dirzuweit, Herbert W. Gillespie and Roosevelt City is granted. **IT IS FURTHER ORDERED** that plaintiff Gardner's complaint against the remaining defendants is dismissed as frivolous under

28 U.S.C.§ 1915(d).

DATED this 5th day of May, 1993.

BY THE COURT:

Dee V. Benson
United States District Judge

APPENDIX C

IN THE DISTRICT COURT

OF UTAH, CENTRAL DIVISION

Case No. 92-C-723 B

LYNDA M. KOZLOWICZ,	)	
EDSON G. GARDNER,	)	
Plaintiffs,	)	REPORT AND
vs.	)	RECOMMENDATION
UNITED STATES OF AMERICA,	)	
et. al.,	)	
Defendants.	)	

Plaintiffs filed suit against the United States and various federal, State, and county agencies, their officers and employees, complaining about jurisdictional deficiencies in connection with the arrest of plaintiff Gardner. Plaintiff Kozlowicz paid the required filing fee, but Plaintiff Gardner was allowed to proceed in forma pauperis pursuant to 28 U.S.C. §1915. Subsequently, some of the defendants filed

motions to dismiss plaintiffs' complaint. The case was referred to the magistrate Judge under 28 U.S.C. § 636(b)(1)(B). This report and recommendation is submitted on (1) defendants' motions to dismiss, and (2) whether to order service of process upon the remaining defendants or to dismiss plaintiff Gardner's claims as frivolous pursuant to 28 U.S.C. § 1915 (d).

Plaintiffs instituted this case by filing a document entitled Petition, Affidavit, and complaint. (File entry 2.) This document is virtually incomprehensible, consisting of long, rambling legal arguments and numerous appendices. Subsequently, plaintiffs filed a second document entitled To Amend Petition, Affidavit, and Complaint. (File entry 5.) This document appears to be an amended complaint. Since at the time plaintiffs filed this document, no defendant had answered the initial complaint,

plaintiffs were free to amend under rule 15 of the Federal Rules of Civil Procedure. The court deems this second document to be the relevant complaint and refers to it as the complaint throughout this report and recommendation.

FACTUAL BACKGROUND

Plaintiff Kozlowicz is a member of the Ute Indian Tribe residing on the Uintah and Ouray Indian Reservation. (Compl.¶ 3.) Plaintiff Gardner is a Uintah Mixed-Blood descendant of Ute Indians who also resides on the Uintah and Ouray Indian Reservation. (Compl.¶ 4.) Plaintiffs' claims arise out of the arrest of plaintiff Gardner on the reservation.

On January 13, 1992, plaintiff Gardner was stopped for speeding Bureau of Indian Affairs (BIA) police officer, defendant Blackbird. After the stop, defendant Blackbird discovered that plaintiff did not have a valid driver's license and the

vehicle's registration had expired. Because plaintiff became loud and abusive, defendant Blackbird decided to take him into custody for safety reasons. Defendant Blackbird arrested plaintiff and took him to the tribal jail where he was held about thirty minutes. Defendant BIA officers Minnie Grant and Felicia Pike were also present during the arrest.

At the jail, the defendant BIA officers discovered that plaintiff was not a tribal member. The defendant BIA officers then turned custody of plaintiff over to officers of the Uintah County Sheriff's Department who took him to the Uintah County Jail. Defendant Dirzuweit was the arresting Uintah County officer. Pursuant to defendant Blackbird's complaint, plaintiff was charged with dosorderly conduct in violation of Utah Code Ann. §76-9-102; no Utah Driver's license, § 41-2-104;

expired registration, § 41-1-49; and speeding, § 41-6-47, aa class C misdemeanors. Plaintiff Gardner was later released on bail.

Plaintiff alleges that he was convicted in Justice Court in Uintah County on August 5, 1992 without notification of the proceeding. Plaintiff alleges that he requested an evidentiary hearing to determine his status as an Indian in order to challenge the State of Utah's jurisdiction over him. According to plaintiff, trial was set without his receiving notice to appear. At trial plaintiff's attorney entered a plea of guilty without plaintiff's consent and plaintiff was fined accordingly. The issue of jurisdiction and plaintiff's Indian status were not decided.

Although the complaint is not a model of clarity, plaintiff Gardner apparently claims that his arrest violated his

constitutional rights because the BIA and Uintah County defendants did not have jurisdiction over him. In addition, the complaint can be read to request reinstatement of Indian status to defendant Gardner. Plaintiffs seek compensatory and punitive damages, injunctive, and declaratory relief.

STATE OF UTAH DEFENDANTS

In their amended complaint, plaintiffs name as defendants the State of Utah, State Attorney General Paul Van Dam, and the Utah State Tax Commission. Defendants State of Utah and VanDam have filed a motion to dismiss on the ground that they are immune from suit and that the complaint fails to state a claim for relief against these defendants. The State Tax Commission did not join in this motion.

Plaintiffs allege subject matter jurisdiction under 28 U.S.C. § 1331,1361, and 2201, relating to federal questions,

declaratory judgments, respectively.[1] In addition, plaintiffs state that they have filed a petition for a writ of habeas corpus and seek to invoke the provisions of the Indian Civil Rights Act as a basis for this court to exercise jurisdiction. See 25 U.S.C. §§1302,1303. It is unclear whether plaintiffs have filed a separate petition for a writ of habeas corpus or if this reference is to the instant case. Nevertheless, the cited provisions apply only to Indian tribes and have not application to any of the named defendants.

In their opposition to the State defendants' motion to dismiss, plaintiffs state that 42 U.S.C. §1983 provides a

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[1]Section 2201 does not confer jurisdiction on federal courts, but simply enlarges the range of available remedies. Amalgamated Sugar Co. v. Bergland, 664 F.2d 818,822 (10th Cir. 1981).

remedy and that jurisdiction is conferred by 28 U.S.C. §1343. (Opp'n State's Mot. Dismiss, file entry 14 at 4.) Since pro se complaints should be held to "less stringent standards than formal pleadings drafted by lawyers," Hughes v. Rowe, 449 U.S. 5, 9 (1980)(quoting Haines v. Kerner, 404 U.S. 519,520 (1972), this court will construe the complaint as attempting to invoke the remedy provided by section 1983. Further, the court notes that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts entitling him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Duree v. Dempsey, 869 F.2d 543,545 (10th Cir. 1989); Meade v. Grubbs, 841 F.2d 1512,1526 (10th Cir. 1988).

Eleventh Amendment Immunity

Absent consent, the Eleventh

Amendment bars suit against a State in federal court. Alabama v. Pugh, 438 U.S. 781, 782 (1978); Edelman v. Jordan, 415 U.S. 651, 662-63 (1974); Ford Motor Co. v. Department of Treasury of Indiana, 323 U.S. 459, 464 (1945); Seibert v. oklahoma ex rel. Univ. of Okla. Health Sciences Center, 867 F.2d 591, 594 (10th Cir. 1989); Meade v. Grubbs, 841 F.2d at 1525. Eleventh Amendment immunity extends to state instrumentalities. See Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977); Seibert, 867 F.2d at 594; Meade v. Grubbs, 841 F.2d at 1525. Thus, plaintiffs' suit against the State of Utah and the Utah State Tax Commission is barred by the Eleventh Amendment.

Plaintiffs' complaint appears to name defendant VanDam in his official capacity. Moreover, in their opposition to the motion to dismiss, plaintiffs state that

defendant VanDam, in his official capacity, violated their rights. (Opp'n State's Mot. Dismiss at 1-2.) Defendant VanDam is entitled to Eleventh Amendment immunity insofar as he is sued in his official capacity for damages.

A suit against an officer in his official capacity is the equivalent of suing the entity which he represents. Hafer v. Melo , 112 S.Ct. 358, 361 (1991); Kentucky v. Graham, 473 U.S. 159, 165-66 (1985); Brandon v. Holt, U.S. 464, 471-72 (1985); Schaefer v. Wilcock, 676 F.Supp. 1092, 1098 (D. Utah 1987). In other words, a suit against a State official in his official capacity is the same as suing the State. Hafer, 112 S.Ct. at 361. As discussed above, the Eleventh Amendment bars suit against a State in federal court. Quern v. Jordan, 440 U.S. 332 (1979) Furthermore, neither a state nor state officials sued in their official capacities

for damages are "persons" under 42 U.S.C. § 1983. Will v. Michigan Dep't of State Police, 109 S.Ct. 2304, 2312 (1989); Hafer, 112 S.Ct. at 362. Therefore, plaintiffs cannot recover damages from defendant VanDam insofar as they have sued him in his official capacity.

Individual Capacity Suit

Even if the complaint is construed to name defendant VanDam in his individual capacity, plaintiffs cannot recover because the complaint contains no factual allegations against him. In order to state a claim under section 1983, a plaintiff must show that the defendant deprived him of a federally protected right while acting under color of State law. Durre v. Dempsey, 869 F.2d at 545; Meade v. Grubbs, 841 F.2d at 1527-28. To be subject to liability, the defendant must have personally participated in the allege deprivation of

protected rights. Rizzo v. Goode, 423 U.S. 362 (1976); Durre v. Dempsey, 869 F.2d at 548; Meade v. Grubbs, 841 F.2d at 1527-28.

Other than the caption, plaintiffs mention defendant VanDam only in paragrah nine describing where he can be served and in the prayer for relief demanding compensatory and punitive damages. Nothing in the complaint connects the events of which plaintiffs complain with any acts of defendant VanDam. A pro-se litigant is not relieved of the obligation to provide sufficient facts upon which a recognized ;egal claim could be based. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). See Potter v. Clark, 497 F.2d 1206, 1207 (7th Cir. 1974) (court properly dismissed pro se complaint where it contained no alleegation against the defendant who was named only in the

caption of the complaint). Accordingly, the motion to dismiss filed by defendants State of Utah and Paul VanDam should be granted.

Defendant State Tax Commission

Defendant State Tax Commission did not join the State defendants' motion to dismiss. However, because plaintiff Gardner was allowed to proceed in forma pauperis, the court examines the complaint to see whether his claim against the State Tax Commission should be dismissed as frivolous under 28 U.S.C. § 1915(d).

A complaint is subject to dismissal under section 1915(d) if it lacks an arguable basis for relief either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A claim against a defendant who is undeniably immune from suit is based on an inarguable legal theory. Hall v. Bellmon, 935 F.2d at 1109. Since the State Tax Commission is entitled

to Eleventh Amendment immunity as discussed above, plaintiff Gardner has no arguable basis for relief against it. Accordingly, his claim against the State Tax Commission should be dismissed under 28 U.S.C. § 1915(d).

COUNTY DEFENDANTS

Plaintiffs have sued Uintah County Attorney Harry Souvall, the Uintah County Sheriff's Department, Uintah County Sheriff Lloyd Meacham, and Uintah County officer Doreen Dirzuweit (County defendants). Although he is not mentioned in the caption of the complaint, plaintiffs name "Duchesne City, County Attorney for Duchesne County Attorney Herbert W. Gillespie" in their section identifying parties. The county defendants have filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

As defendants point out, the complaint contains no allegations against Mr. Gillespie. Therefore, the complaint should be dismissed as to defendant Gillespie. Defendants also point out that the complaint contains no facts or allegations to support a claim for relief on the part of plaintiff Kozlowicz. Accordingly, the county defendants' motion to dismiss should be granted as to the claims of plaintiff Kozlowicz.

Plaintiff Gardners' claims against the county defendants appear to be based upon a contention that they did not have jurisdiction to arrest and prosecute him. This claim is without merit. Indians in Indian Country are subject to exclusive tribal or federal criminal jurisdiction, except as otherwise provided by law. 18 U.S.C. §1152; Ross v. Neff, 905 F.2d 1349, 1352 (10th Cir. 1990). However,

states have criminal jurisdiction over crimes committed in Indian Country by non-Indians against non-Indian and over victimless crimes by non-Indians. Solem v. Bartlett, , 465 U.S. 463, 465 n.2 (1984); United states v. Antelope, 430 U.S. 641,643 n.2 (1977); Ross, 905 F.2d at 1353.

Under the Ute Partition and Termination Act, mixed-blood Utes lost their status as federally recognized Indians. See Ute Partition and Termination Act, 25 U.S.C. §677-677aa. Maldonado v. Hodel, 683 F.Supp. 1322, 1330 (D.Utah 1980), aff'd, 977 F.2d 596 (10th Cir. 1990). The Act provides that all federal statutes which affect Indians because of their status as Indians shall no longer be applicable to mixed-blood Indians and state laws shall apply to them in the same manner

as they apply to other citizens. 25 U.S.C. § 677v. See State v. Gardner, 827 P.2d 980 (Utah App. 1992)(holding that state courts have criminal jurisdiction over mixed-blood Utes), cert. denied, 836 P.2d 1383 (Utah 1992). See also United States v. Heath, 509 F.2d 16,19 (9th Cir. 1974)(stating that terminated Indians are subject to state laws and should be treated by the law no differently than any other citizens). In the instant case, plaintiff Gardner admits that he is a mixed-blood Ute. (compl. ¶ 4.) Based on his status as a mixed-blood Ute, plaintiff Gardner was subject to the jurisdiction of the county defendants the same as any other citizen. Accordingly, plaintiff has no arguable basis for relief against the county defendants.

In their prayer for relief, plaintiffs request an order in the nature of mandamus compelling defendants to restore "the benefits of the Indian Jurisdiction" to plaintiffs. (compl. at 9.) The county defendants contend that plaintiff Gardner is challenging his status as a non-Indian which deprives him of the benefits of membership in the Ute Tribe, and also subjects him to the jurisdiction of the state courts. Defendants argue that this presents a nonjusticiable political question and that the complaint fails to state a claim for relief against them because they have no control over plaintiff Gardner's status as a non-Indian.

The United States constitution grants congress plenary power over Indian affairs. see U.S. Const. Art. I,§8, cl.3. National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845,851 (1985).

Only the tribe or congress has the power to alter plaintiff's non-Indian status or to change the benefits to which he is entitled. None of the named defendants has the authority to restore the benefits of Indian jurisdiction to plaintiff Gardner. Accordingly, insofar as plaintiff Gardner seeks a change in his status, this claim should be dismissed.

ROOSEVELT CITY

Roosevelt City has filed a motion to dismiss. Plaintiffs did not name Roosevelt City as a defendant in the caption of the complaint. Under Rule 10 of the Federal Rules of Civil Procedure, the names of all parties must be included in the complaint's caption. Moreover, there are no allegations against Roosevelt City in the complaint and nothing in the facts alleged suggest that plaintiffs have a claim against Roosevelt City. The only

references to Roosevelt City are in the context of how the city may be served with process, a statement that plaintiff left the Roosevelt city court building and then operated a motor vehicle in Roosevelt City, and a request for compensatory and punitive damages against the city. These references are insufficient to make Roosevelt city a defendant in a case in which it is not named as a defendant. See Adams v. School Bd. of Wyoming Valley West Sch. Dist., 53 F.R.D. 267, 268 (M.D. Pa. 1971) (holding that persons not named in caption of complaint were not defendants). Since plaintiffs have neither named the city as a defendant nor stated a claim for relief against it, the complaint should be dismissed as to Roosevelt city.

FEDERAL DEFENDANTS

Sovereign Immunity

Plaintiffs have sued the United

States of America, Manuel Lujan Jr., the Secretary of the Department of Interior, and Perry Baker, BIA Superintendent of the Uintah and Ouray Agency. The issue is whether plaintiff Gardner's complaint against these defendants should be dismissed under 28 U.S.C. § 1915(d).

Suit against the United States and its agencies is barred by the doctrine of sovereign immunity unless the United States consents to suit. United States v. Testan, 424 U.S. 392, 339 (1976); National Commodity & Barter Ass'n v. Gibbs, 886 F.2d 1240, 1245-46 (10th Cir. 1989); Atkinson v. O'Neill, 867 F.2d 589,590 (10th Cir. 1989). This bar also applies to employees of the United States sued in their official capacities. Gibbs, 886 F.2d at 1246; Atkinson, 867 F.2d at 589. There is no waiver of sovereign immunity. Thus, plaintiff Gardner cannot recover from the United States or from defendants Lujan and Baker in their official capacities.

Although federal employees may be liable for constitutional violations committed in their individual capacities while acting under color of federal law, Bivens v. Six Unknown Named Federal Narcotics Agents, 403 U.S. 388 (1971), there is no indication that plaintiff has sued defendants Lujan and Baker in their personal capacities.[2] Moreover, the complaint is devoid of any facts that would connect either defendant Lujan or defendant Baker to the alleged violations.

Plaintiff complains that he was not afforded an opportunity to challenge the jurisdiction of the "Indian Communities" despite the fact that defendant Baker had an express duty to look after the interest of the tribal community. (Compl. ¶ 31.)

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[2]Section 1983 provides a remedy for deprivations under the color of state law. District of Columbia v. Carter, 409 U.S. 418, 424 (1973). It does not apply to purely private conduct nor actions of the federal government and its officers. Id. at 424-25.

It is unclear what plaintiff means since no jurisdiction was exercised by the tribe in this case. Further, assuming that defendant Baker had a duty as defined by the plaintiffs, he did not have authority to alter tribal criminal jurisdiction. Plaintiff cannot recover from defendant Baker on the ground that he was the supervisor of the BIA police officers, because a plaintiff in a Bivens, action cannot recover on a theory of respondeat superior. Kite v. Kelley, 546 F.2d 334,337 (10th Cir. 1976).

Plaintiff also states that the jurisdiction of the "Indian Communities" was unlawful in that it is an "unconstitutional violation of racial equal protection." (Compl. at 8-9.) As previously mentioned, there was no exercise of tribal jurisdiction in this case. Moreover, the Supreme Court has repeatedly stated that laws respecting Indians are not based

on impermissible racial classifications. United States v. Antelope, 430 U.S. at 645-47; Fisher v. District Court of the Sixteenth Judicial Dist., 424 U.S. 382, 390-91 (1976); Morton v. Mancari, 417 U.S. 535, 553-55 & n.24 (1974). Rather, these laws have their roots in the "unique status of Indians as 'a separate people' with their own political institutions." Antelope, 430 U.S. at 646. Further, the Tenth Circuit has held that the Termination Act's distinction between full-blood and mixed-blood Utes does not unreasonably discriminate against the mixed-blood group. Ute Indian Tribe of the Uintah and Ouray Reservation v. Probst, 428 F.2d 491,498 (10th Cir. 1970), cert. denied, 400 U.S. 926 (1970). Since no arguable basis exists upon which plaintiff Gardner could recover against defendants United States, Lujan, and Baker, the complaint

should be dismissed as to them under 28 U.S.C. § 1915(d).

BIA Police Officers

Plaintiff Gardner alleges that defendant BIA officer Blackbird arrested him on the reservation, placed him in the tribal jail, and subsequently turned him over to Uintah County authorities. Defendant BIA officers Pike and Grant were present at the time of the arrest. There are no other allegations against these defendants. Although plaintiff Gardner seems to contend that the police officer defendants did not have jurisdiction to arrest him, this is clearly not the case. The BIA officers have authority to arrest, and turn over to the proper authorities, persons who violate State or Federal law on the reservation. See Duro v. Reina, 110 S.Ct. 1053, 2066 (1990)(stating that where jurisdiction rests outside the tribe, tribal officers

have the power to detain the offender and transport him to the proper authorities), Ortiz-Barraza v. United States, 512 F.2d 1176,1179 (9th Cir. 1975)(same).

Plaintiff was admittedly on the reservation when the arrest occurred. The defendant police officers stopped him for speeding, a violation of state law. After plaintiff became abusive, officer Blackbird arrested plaintiff for safety reasons. When the arresting officer learned that plaintiff was not a member of the Ute Tribe, they turned him over to state authorities. This did not violate any right of plaintiff Gardner. Plaintiff Gardner has no arguable basis for relief against the BIA police officers. Accordingly, his claim against them should be dismissed pursuant to 28 U.S.C. § 1915(d).

RECOMMENDATION

The court should grant the motions to dimiss of defendants State of Utah, State Attorney General Paul VanDam, Uintah County Attorney Harry Souvall, the Uintah County Sheriff's Department, Uintah County Sheriff Lloyd Meacham, Uintah County officer Doreen Dirzuweit, Herbert W. Gillespie, and Roosevelt City. Further, plaintiff Gardner has no basis for relief either in law or in fact against the remaining defendants. Accordingly, plaintiff Gardner's complaint against the remaining defendants should be dismissed as frivolous under 28 U.S.C. § 1915(d).

Copies of this Report and Recommendation are being mailed to the parties, who are hereby notified that they have the right to object to the Report and Recommendation. The parties are further notified that they must file any objections

to the report and recommendation within ten (10) days after receiving it.

Dated this 19th day of April, 1993.

Ronald N. Boyce
United States Magistrate
Judge